

IN THE COURT OF APPEALS OF IOWA

No. 0-649 / 10-1240
Filed September 9, 2010

**IN THE INTEREST OF D.D.M.,
Minor Child,**

**C.B.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Carroll County, James A. McGlynn,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.
AFFIRMED.

Robert E. Peterson, Carroll, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Werden, County Attorney, and Tina Meth-Farrington,
Assistant County Attorney, for appellee State.

De Ann Wunschel, Carroll, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A biological mother appeals the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination of her parental rights was not in the child's best interests nor necessary because a relative was available for custody placement. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

C.B.H. is the biological mother of seven children: J.M., K.M., M.M., D.M., D.D.M., and twins born during the pendency of this case.¹ C.B.H. has a long history of involvement with child protective services. In June 1998, while living in Texas, J.M. was removed from C.B.H.'s custody due to reports of physical abuse. C.B.H.'s parental rights to J.M. and D.M. were later terminated in Texas. In 2002, there were reports of medical neglect and physical abuse of K.M. in Texas. Texas provided family preservation services for K.M. and M.M. from August 2003 to July 2004. C.B.H. was not compliant with those services, and she left the area, fleeing to Iowa.

In April 2005, Iowa police officers responded to a welfare check at the family's apartment in Carroll and found the mother unconscious after she overdosed on her prescription medication; one of her children was sleeping next to her on the bed. Additionally, the condition of C.B.H.'s apartment was found not safe for the children. These issues led to founded child abuse assessments of denial of critical care for failure to provide proper supervision and adequate shelter. Child welfare services were provided to C.B.H. for several months, but

¹ This appeal concerns only the termination of C.B.H.'s parental rights to D.D.M.

C.B.H. fled to Texas and did not return to participate in recommended reunification services. C.B.H.'s parental rights to K.M. and M.M. were terminated in Iowa on August 14, 2006, and the following findings of fact were set forth in the juvenile court's order in that case:

[C.B.H.] has a long and unsuccessful history of involvement with child welfare agencies. Her parental rights to a child have been terminated by the State of Texas. The mother is now living in Texas. She left Iowa while pregnant, and her reason for leaving Iowa was due in large part because of her fear that the State of Iowa might take custody of her newborn baby. Of course this tactic prevented the mother from maintaining regular contact with [K.M.] and [M.M.] and made it impossible for the [Iowa Department of Human Services] to provide reunification services for her. Moreover, the tactic failed because Texas has now taken custody of [D.M.] because of that state's concerns with the mother's parenting abilities. . . . The mother also has a lengthy history of substance abuse. She is currently court ordered by the State of Texas to undergo inpatient substance abuse treatment. She is on a waiting list for that treatment. She has been diagnosed with mild mental retardation. She also has a history of allowing inappropriate people to have contact with her children. The putative father of [D.M.] is a registered sex offender. Intensive and extensive services have been offered to the mother without any meaningful long-term improvement. Among the services which were provided was placement of the mother at Jackson Recovery Center. This is a facility which allowed her to work on her substance abuse problems while having her children with her. However, the mother was asked to leave this facility. The discharge summary from [the Center] sets out the mother's complete lack of parenting skills. In pertinent part, the report states:

"Throughout [C.B.H.'s] treatment stay, she struggled with not only engaging in the treatment program, but also with providing basic care and discipline to her children. . . . In addition, there were numerous concerns throughout [C.B.H.'s] treatment stay with her lack of providing basic care to [K.M.] and [M.M.], including: giving them daily baths, dressing them in clean clothes, keeping her room clean and safe, and washing laundry on a regular basis. Staff helped to train [C.B.H.] on how to carry out these necessary tasks, and educated her on the importance of hygiene and cleanliness. [C.B.H.] continued to struggle throughout her treatment stay with these issues, and

at the time of her discharge, was not following through with meeting her own personal hygiene needs on a daily basis. . . .”

In December 2006, C.B.H. gave birth to D.D.M. in Texas. However, D.D.M.’s birth certificate listed S.S., C.B.H.’s mother, as D.D.M.’s biological mother. No father was named on the birth certificate. In 2007, it was reported in Texas that C.B.H., C.B.H.’s brother, and C.B.H.’s mother were using drugs around D.D.M., then five months old. Texas assigned a special investigator to the case, and the Texas Department of Health and Human Services planned to remove D.D.M. from C.B.H.’s care. However, C.B.H. fled from Texas with D.D.M. and could not be located.

C.B.H. returned to Iowa with D.D.M. D.D.M. came to the attention of the Iowa Department of Human Services (Department) in September 2009, after a child abuse assessment was initiated for D.D.M. It was reported that D.D.M. had a history of seizure activity and was out of anti-seizure medicine, and C.B.H. was overmedicating D.D.M. with over-the-counter cold and allergy medicines when the child did not need them. It was further alleged that C.B.H. had grabbed D.D.M. by the neck, choking the child, and C.B.H. had hit D.D.M. in the face making the child’s lip bleed. D.D.M.’s immunizations were not current, and the child had severe tooth decay.

The Department requested that D.D.M. be temporarily removed from C.B.H.’s custody, and the court granted the Department’s request. When the Department and police went to remove D.D.M. from C.B.H.’s custody, C.B.H. and D.D.M. were found at a bus station, planning to leave Iowa. The police officers physically removed D.D.M. from C.B.H., and C.B.H. gave the officers four bottles

of medicine she said she had been giving to D.D.M., including Children's Motrin, store brand children's allergy antihistamine, and a store brand Robitussin DM. She also gave the officers D.D.M.'s sippy cup, which was approximately one-fourth full of very spoiled and curdled milk. C.B.H. had no diapers for D.D.M. D.D.M. was placed in foster care, and the State filed its petition asserting D.D.M. to be a child in need of assistance (CINA).

A removal review hearing was held on September 9, 2009. C.B.H. and her attorney advised the court that while C.B.H. was in Texas, she relinquished her parental rights to D.D.M. so her mother, S.S., could adopt D.D.M. C.B.H. advised that S.S. had completed the adoption of D.D.M., but S.S. had recently passed away, and C.B.H. then reclaimed custody of D.D.M. Based upon C.B.H.'s information, the court found C.B.H. was legally a stranger to D.D.M. and she had no standing at that time to contest the removal order. The court continued D.D.M.'s removal from C.B.H.'s custody, and C.B.H. was not given visitation with D.D.M.

A CINA adjudicatory hearing commenced on October 14, 2009. At that hearing, the juvenile court was provided with copies of D.D.M.'s birth certificate naming S.S. as the child's birth mother. The court was also provided a copy of S.S.'s death certificate. Because of the apparent fraud, the court was unsure it had jurisdiction of the necessary parties. The court authorized service by publication on individuals claiming to be the biological father or mother of D.D.M. The court authorized the completion of a relative home study of C.B.H.'s aunt, who resided in Georgia, and the court rescheduled the continuation of the hearing.

C.B.H.'s aunt filed a motion to intervene in the case. The State resisted, noting that the state of Georgia had refused to perform a relative home study of the aunt's home. Georgia refused the relative study because it was unproven at the time that C.B.H.'s aunt was in fact a relative of D.D.M., but it offered to complete a foster parent home study, which the aunt refused. Additionally, the State argued that D.D.M. was currently without parent, noting that D.D.M.'s legal mother was deceased and C.B.H. had ceased contact with the Department. The State also argued that C.B.H.'s aunt was not D.D.M.'s custodian and had never served as a custodian for the child. The court denied the aunt's motion unless and until a favorable home study had been received.

Following a continuation of the adjudicatory hearing, the parties stipulated that the facts contained in the CINA petition were true and to D.D.M. being adjudicated a CINA. On January 27, 2010, the juvenile court entered its order adjudicating D.D.M. a CINA. The court authorized DNA testing of C.B.H. to determine once and for all if C.B.H. was the biological mother of D.D.M.

DNA testing confirmed that C.B.H. is D.D.M.'s biological mother. Based upon C.B.H.'s history, including the termination of her parental rights to her four older children, the Department recommended that reasonable efforts be waived and that the permanency goal for D.D.M. be adoption. The State then filed its motion to waive reasonable efforts, in which D.D.M.'s guardian ad litem joined. Additionally, information was sent by the Department to Georgia to allow them to complete the relative home study based on the confirmation of C.B.H.'s maternity to D.D.M.

In February 2010, C.B.H. gave birth to twins. At that time, C.B.H. tested positive for methamphetamine, benzodiazepines, and opiates. The twins were removed from C.B.H.'s custody and placed in foster care with D.D.M.

D.D.M. was doing very well with the foster family and had bonded with the family. After his placement in foster care, he was evaluated by a neurologist and medical testing was completed, resulting in the doctor determining there was no evidence that D.D.M. had had any seizure activity. D.D.M.'s teeth were repaired, and the child was undergoing speech therapy. He was becoming bonded to his siblings who were also placed in the same foster family.

In April 2010, the juvenile court entered its order waiving reasonable efforts in D.D.M.'s case. The court found C.B.H. suffered termination of her parental rights to other children who are members of the same family and C.B.H.'s history showed that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions that led to the child's removal. On May 26, 2010, the court entered its permanency order directing the State to institute proceedings to terminate the parent-child relationship. The court noted that C.B.H.'s aunt had still not been approved for placement by the state of Georgia, and that C.B.H.'s aunt's attorney indicated that the matter should proceed to termination of parental rights. The State then filed its petition to terminate C.B.H.'s parental rights.

A hearing on the termination of her rights was held on July 29, 2010. C.B.H. testified she lived with her brother and was unemployed. She also testified that she had previously successfully completed the Jackson Recovery Center's program, and that if the reports indicated otherwise, the reports were

wrong. She testified that her mother's name was on D.D.M.'s birth certificate because her mother filled out the certificate. Thereafter, the court entered its order terminating C.B.H.'s parental rights to D.D.M. under Iowa Code sections 232.116(1)(e), (g), and (h) (2009).

The mother now appeals.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children's safety; their physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. "Even though the court may determine that termination is appropriate under section 232.116(2), the court need not terminate a parent's parental rights if any of the circumstances contained in section 232.116(3) exist." *P.L.*, 778 N.W.2d at 37.

III. Discussion.

The mother contends the State failed to prove the grounds for termination by clear and convincing evidence and termination of her parental rights was not in the child's best interests nor necessary because a relative was available for custody placement. We disagree.

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, we choose to focus our attention on Iowa Code section 232.116(1)(g) as the basis for termination. Section 232.116(1)(g) authorizes the termination of parental rights where (1) the child has been adjudicated in need of assistance, (2) the court has terminated parental rights to another child who is a member of the same family, (3) “[t]here is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation,” and (4) an additional period of rehabilitation would not correct the situation. C.B.H. does not dispute the first two elements have been met. Rather, she asserts elements (3) and (4) have not been met.

The juvenile court, in terminating C.B.H.’s parental rights to D.D.M., found that nothing had improved since the prior termination case in 2006, explaining:

The mother has continued to use drugs. The mother has continued to lack stable housing and employment. The mother has not been able to maintain any stable relationships. Services have been provided to the mother, but she has been unable to profit from them and on several occasions has avoided services altogether by leaving a jurisdiction. She has been dishonest with providers and the court, including her testimony that she had successfully completed the Jackson Recovery Center [program] when in fact she was unsuccessfully discharged from it and her apparent fraud regarding the name and identity of the true birth mother. Using the past to predict the future, there is absolutely no reason to believe that [C.B.H.] would be capable of providing a safe, stable, and secure home for [D.D.M.].

In our de novo review, we reach the same conclusion. Consequently, we find the State proved by clear and convincing evidence that C.B.H. continued to lack the ability to respond to services that would correct the situation and that an

additional period of rehabilitation would not correct the situation. Accordingly, we conclude the statutory grounds under section 232.116(1)(g) have been met.

B. Best Interests.

C.B.H. also contends termination of her parental rights is not in D.D.M.'s best interests. We disagree.

We have considered the factors of section 232.116(2), "the child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child," and conclude termination of C.B.H.'s rights is in the best interests of D.D.M. See *P.L.*, 778 N.W.2d at 39, 41. The record demonstrates that C.B.H. is not able to provide a safe and nurturing home for D.D.M. The child is doing very well in the foster family home and has adjusted very quickly. D.D.M. has formed a bond with the foster family. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). D.D.M. needs and deserves permanency. *J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially). We conclude termination was in D.D.M.'s best interests as set forth under the factors in section 232.116(2).

C. Relative Care.

Finally, C.B.H. contends termination is unnecessary because a relative was available for custody placement. We disagree.

Iowa Code section 232.116(3) lists exceptions to termination in certain enumerated circumstances, including "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). Here, a relative does not have legal custody of

D.D.M. Consequently, we conclude the exception in section 232.116(3)(a) does not apply to the facts of this case.

Even assuming, *arguendo*, that D.D.M. was placed in the legal custody of a relative, the exception in section 232.116(3)(a) is permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Here, C.B.H. was not named as the birth mother on the D.D.M.'s birth certificate. We find no error in the court not allowing C.B.H.'s aunt to intervene when it was unknown if the aunt was even actually a relative of the child. See *In re H.N.B.*, 619 N.W.2d 340, 342 (Iowa 2000) ("Our review of a denial of a motion to intervene is for the correction of errors at law."); see also Iowa Code § 232.117(3)(c) (providing a "relative" may be considered for custody in the dispositional phase of a CINA proceeding). Once C.B.H. was established as the birth mother, the court authorized continuation of C.B.H.'s aunt's home study. At the permanency hearing, the home study had not yet been completed, and C.B.H.'s aunt's attorney indicated to the court that it should proceed with termination proceedings. Upon our review, we determine the district court properly exercised discretion in this case.

IV. Conclusion.

We find clear and convincing evidence to support the district court's termination of C.B.H.'s parental rights and conclude termination was in D.D.M.'s

best interests as set forth under the factors in section 232.116(2). We further conclude the exception to termination in section 232.116(3)(a) does not apply to the facts of this case, and find that, in any event, the district court properly exercised discretion in this case. Accordingly, we affirm the juvenile court's order terminating C.B.H.'s parental rights to D.D.M.

AFFIRMED.